IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 1543 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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PATEL KANTILAL BABALDAS - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SS KADRI for Applicant(s) : 1,MR MAHENDRA TRIVEDI for Applicant(s) : 1,
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR.RAJESH B SONI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/07/2007

ORAL JUDGMENT

1. By way of this application under Section 482 of the Criminal Procedure Code, the applicant –

original accused No.2, has prayed for an appropriate order quashing and setting aside the order dated 20.01.2007 passed below Exh. 3 in Criminal Case No. 2140 of 2006 by the learned Principal Judicial Magistrate First Class Court, Kalol and discharge the applicant in connection with the complaint filed by opponent No.2 before the Kalol Police Station bearing F.I.R. No. I/48/2006 for the offences punishable under Section 498(c)(a), 420 and 114 of the Indian Penal Code and Sections 3 and 7 of the Prevention of Dowry Act.

2. It is the case on behalf of the applicant that respondent No.2 herein filed one complaint on 10.08.2005 against the applicant and his family members before the Vadnagar Police Station bearing C.R.No. I/89/2005 for the offences punishable under Sections 498-A and 420 of the Indian Penal Code. That on 02.08.2005 summons of the Superior Court for the Country of Dooly, State of Georgia in Civil Action No.05DV-0156 came to be received by respondent No.2 and she has given reply to the said proceedings on 06.08.2005 and in the said case, the Superior Court for the Country of Dooly, State of Georgia has passed

the Decree of Divorce on 27.06.2006. It is the case on behalf of the applicant that on 15.04.2006, the applicant filed application below Exh. 5 in Criminal Case No. 87 of 2006 before the learned Chief Judicial Magistrate, Vadnagar under Section 239 for discharge and by order dated 04.05.2006, the learned Chief Judicial Magistrate, Vadnagar allowed the discharge application of the applicant and discharged him on the ground of jurisdiction and limitation. Said order came to be confirmed by the Revisional Court by order dated 25.07.2006. That thereafter, on 26.07.2006, respondent No.2 – original complainant has filed present complaint before the Kalol City Police Station against the applicant and his family members being C.R.No. I/48/2006 for the offences punishable under Sections 498(c)(a), 420 and 114 of the Indian Penal Code and under the Prevention of Dowry Act. That thereafter, concerned Investigating Officer submitted charge-sheet on 09.10.2006 before the learned Chief Judicial Magistrate, Kalol. That on 07.11.2006 the applicant filed application below Exh. 3 in Criminal Case No. 2140 of 2006 before the learned Chief Judicial Magistrate, Kalol for

discharging him from the charge under Section 239 of the Criminal Procedure Code and by impugned order dated 20.01.2007 the learned Principal Judicial Magistrate First Class, Kalol dismissed the said application of the applicant below Exh.3 for discharge. Therefore, the applicant – original accused has preferred the present application for the aforesaid reliefs.

3. The learned Advocate appearing on behalf of the applicant has vehemently submitted that when earlier the applicant was discharged by the learned Chief Judicial Magistrate, Vadnagar for the same offences, the second complaint before the Police Station, Kalol was not maintainable. It is submitted by him that the earlier complaint before the Vadnagar Police Station was also for the offences punishable under Sections 498(c)(a), 420 and 114 of the Indian Penal Code and under the Prevention of Dowry Act in which the applicant came to be discharged by the learned Chief Judicial Magistrate by order dated 04.05.2006 and the said order was also confirmed by the Revisional Court, therefore, second complaint is

not maintainable. The learned trial Court has committed an error in dismissing the discharge application. It is further submitted that even otherwise the applicant has not committed any offence as alleged. Therefore, it is requested to quash the complaint as well as the charge-sheet.

4. On the other hand, Mr.M.R.Mengdey, learned Additional Public Prosecutor appearing on behalf of the State as well as Mr.Soni, appearing on behalf of respondent No.2 while opposing the present application have submitted that earlier the applicant was discharged mainly on the ground of jurisdiction and not on merits and as such there is no bar of filing second complaint under the Criminal Procedure Code. It is submitted that when the applicant was discharged by the learned Chief Judicial Magistrate, Vadnagar mainly on the ground of jurisdiction and observing that Vadnagar would not have any jurisdiction and Kalol Court would have jurisdiction, therefore, respondent No.2 has filed the complaint before the Police Station having local jurisdiction, and that after investigation charge-sheet has been

filed and considering prima – faice evidence against the applicant requires further trial. Therefore, the learned trial Court has rightly rejected the application for discharge. It is submitted that even earlier also when the complaint was filed before the Vadnagar Police Station and after investigation charge-sheet was filed against the applicant, but the learned Judicial Magistrate First Class, Vadnagar discharged the applicant mainly on the ground of jurisdiction and on the ground of delay i.e. filing complaint after twenty two months. Therefore, it is requested to dismiss the present application.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. It is required to be noted that earlier respondent No.2 – original complainant filed complaint against the applicant and other for the offences punishable under Sections 498(c)(a), 420 and 114 of the Indian Penal Code and under the Prevention of Dowry Act. After investigation Investigating Officer submitted charge-sheet. However, learned Chief Judicial Magistrate, Vadnagar discharged the

applicant mainly on the ground of jurisdiction and on the ground of limitation (delay) of twenty two months. It is required to be noted at this stage that when the learned Chief Judicial Magistrate, Vadnagar was of the opinion that he has no jurisdiction and on that ground the applicant was discharged, as such it was not open for the learned Chief Judicial Magistrate, Vadnagar to pass further order considering the ground of delay. Thus the observation/ findings of the learned Chief Judicial Magistrate, Vadnagar with regard to delay is without jurisdiction and is nullity. That after the applicant came to be discharged by the learned Chief Judicial Magistrate, Vadnagar mainly on the ground of jurisdiction, subsequently, the original complainant filed complaint before the Police Station having local jurisdiction and after investigation charge-sheet has been filed against the applicant and others. That thereafter, the applicant submitted application for discharge which is dismissed by detail cogent reasons by observing that there is prima – facie case against the applicant and the persons who are charged, which requires further

trial. As held by Hon'ble Supreme Court in the case of ***State of Orissa and Anr. V/s. Saroj Kumar Sahoo .*** reported in *(2005) 13 SCC 540* while framing the charge at the time of considering the charge-sheet the Court is not required to minutely consider where accused who is charged and/or against whom charge is farmed is likely to be convicted or not. At that stage it is not open for the Court to minutely consider by appreciating the evidence. It is also observed by the Hon'ble Supreme Court that at that stage what is required to be considered by the Magistrate is whether any prima faice case is made out against the accused for which further trial is required or not.

8. Under the circumstances, and considering the order passed by the learned trial Court rejecting the application of the applicant for discharge there is prima faice case against the applicant fur further trial. Under the circumstances and considering judgment of the Hon'ble Supreme Court in the case of *Saroj Kumar Sahoo (supra)*, the prayer of the applicant to quash and set aside the impugned order

passed by the learned trial Court rejecting the application of the applicant for discharge and to quash and set aside the impugned complaint and charge-sheet requires rejection and accordingly it is rejected. This Court is not minutely considering the allegations and counter-allegations at this stage and is not expressing any further opinion on merits of the case as it may likely to effect either parties as trial is yet to take place. Suffice it to say that the applicant is not required to be discharged without trial and there is prima-facie case against the applicant and others which requires further trial.

9. For the reasons stated above, the application fails requires to be dismissed and accordingly it is dismissed. Notice discharged. Ad interim relief granted earlier stands vacated forthwith.

[M.R.Shah, J.]

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